

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TRUEPOSITION, INC.)
Plaintiff,)
Case No. 2:11-cv-4574 (RK)
v.)
LM ERICSSON TELEPHONE COMPANY,)
QUALCOMM INC.,)
ALCATEL-LUCENT USA INC.,)
and)
THIRD GENERATION PARTNERSHIP)
PROJECT, a/k/a 3GPP)
Defendants.)

**REPLY IN SUPPORT OF TRUEPOSITION, INC.’S
MOTION TO COMPEL DISCOVERY DIRECTED TO DEFENDANT QUALCOMM INC.**

TruePosition respectfully submits this short reply to address two issues raised by defendant Qualcomm's Memorandum in Opposition to TruePosition's motion.

First, the hit report Qualcomm submitted with its Memorandum does not comply with the requirements of the Court's ESI Order. Under that Order, the burden of a particular query is measured not by the total number of documents it “hits,” but rather by the number of incremental documents that the query would add to the production over and above what has already been “hit” by the agreed-upon queries. *See* ESI Order § G.6(e) (Dkt. No. 175) (requiring hit reports to “support any claim that a *particular search term* is overbroad or burdensome”) (emphasis added). That is what TruePosition requests – a report that counts the number of documents “hit” by a particular query that are not already captured by the other agreed-upon queries. Thus, it is not sufficient for Qualcomm to merely say that a particular query hits X *total* documents. Its

reports need to identify how many *additional* documents would need to be reviewed *solely because of that query*. Only such a report enables the parties to determine whether a particular contested query is too broad (returns too many additional documents) or too narrow, and to amend it accordingly. That is the type of “unique hit report” that TruePosition and other defendants have produced and exchanged with one another, with great success—but Qualcomm refuses to produce. Notably, Qualcomm does not claim any burden to run the automated unique hit report requested by TruePosition, as no such burden exists.

Second, we call to the Court's attention a second issue raised in Qualcomm's Memorandum at page 11, concerning two specific search queries that previously were the subject of this Court's October 1, 2013 Order granting in part TruePosition's Motion to Compel. In that Order, the Court required Qualcomm to produce documents related to ATIS and ETSI, two of 3GPP's Organizational Partners, by running two search queries proposed by Qualcomm (which are different from queries proposed by TruePosition in the present motion). However, the Qualcomm-proposed queries cited in the Court's Order, as written, are syntactically invalid queries that will not run on any computer search engine. Decl. of Tuan Nguyen-Huynh ¶¶ 3-4, dated October 14, 2013, attached hereto at Exhibit 1. As a result, attempting to run the queries will return no documents. Qualcomm admits that it has not actually tested these two queries before proposing them. *See* Bernabe Decl. Ex. 14 (filed under seal per the Court's October 1, 2013 Order (Dkt. No. 206)). Therefore, to accomplish the intention of the Court's October 1, 2013 Order, TruePosition respectfully requests that the Court order the parties to use the same methodology used for all other contested queries, and to run the queries as proposed by TruePosition. After actually testing the queries and generating a unique hit report, TruePosition remains ready to negotiate reasonable search queries for these two, and for all, contested queries.

For the reasons set forth above, TruePosition respectfully requests that its Motion be granted, and that Qualcomm be ordered to provide a unique hit report for all contested queries – including the two ATIS and ETSI queries.

Date: October 15, 2013

Respectfully submitted,

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